the court orally. In the circumstances I would allow the appeal with costs.

Ismail Khan and **Abdul Aziz JJ.** concurred.

Appeal allowed.

Solicitors: *Wilson & Co; Wrigglesworth & Co.*

KERPA SINGH v. BARIAM SINGH

[F.C. (Barakbah C.J. (Malaya), Ismail Khan and Abdul Aziz JJ.) September 6, 1965]

[Kuala Trengganu — Federal Court Civil Appeal No. 31 of 1965]

Bankruptcy — Setting aside bankruptcy notice — Satisfaction of judgment debt by third party — Appeal from.

Contract — Accord and satisfaction — Acceptance of tender by third party of smaller amount by cheque in settlement of a larger sum — Whether section applies where the debt is a judgment debt — Contracts (Malay States) Ordinance, 1950, s. 64.

This was an appeal against an order that the bankruptcy notice taken out by the appellant creditor be set aside on the ground that the judgment debt had been satisfied by the tender by a third party of a cheque for a smaller amount than the sum due as payment in full, which cheque was accepted and cashed by the creditor. It was argued by the appellant that on the facts there was no accord and satisfaction and in any event section 64 of the Contracts (Malay States) Ordinance, 1950, had no application where the parties stood to each other in the position of judgment debtor and decree holder.

Held: as the creditor had accepted the tender by cashing the cheque and retaining the money he must be taken to have agreed to discharge the debtor from any further liability.

Case referred to:—

(1) *In Firm Basdeo, Ram Sarup* v. *Firm Dilsukh Rai, Sewak Ram* (1922), I.L.R. 44 All.

FEDERAL COURT.

H. L. Wrigglesworth for the appellant.

A. Wilson for the respondent.

Abdul Aziz J.: This is an appeal against the decision of the Honourable Mr. Justice M. M. Hashim given at Kota Bharu on the 21st day of May, 1962 allowing the application of the respondent debtor to set aside a bankruptcy notice taken out by the appellant creditor against him and one other person on the ground that the judgment debt has been satisfied by the tender by a third party of a cheque for a smaller amount than the sum due as payment in full, which cheque was accepted and cashed by the creditor.

The facts as ascertained by the learned judge are briefly: As a result of a previous litigation between the parties, the appellant creditor was awarded a decree of $8,869.94 including costs. On 6th February, 1964, Mr. Wrigglesworth of Messrs. Wrigglesworth and Co., solicitors for the creditor took out bankruptcy notice against the debtor and the other person which was issued on 10th February, 1964. The ground on which the application to set aside the bankruptcy notice was made was that there was full discharge of his liability by the acceptance of an offer of a smaller amount made by a third party subject to conditions. The offer was contained in a letter dated 30th July, 1963 from one Gurbakhash Singh, son of the appellant debtor to Mr. Wrigglesworth and, to appreciate the import, I quote his letter in full:—

"Dear Mr. Wrigglesworth,

I am the son of Mr. T. Bariam Singh. I came to know through my father and Mr. Bhan Singh, the court interpreter of Raub that you have agreed to receive $4,000 (Dollars four thousand only) from my father being payment in full settlement of his share in the above civil suit towards the decretal amount and costs amounting to $8,650. Upon payment of this sum you have agreed that you would take no action whatsoever against my father and that the balance thereof to sue against the other defendant Mr. Bachan Singh.

Due to undue delay in getting the required amount I could not get in touch with you in time as you have left for U.A.R.

I now enclose a receipt for $4,000 paid by a cheque at your firm in Kota Bharu.

I pray you will accept the payment and agree to allow to discharge my father Mr. Bariam Singh from any further liability.

If you don't agree to the above settlement please return me my money.

I am, Sir,
Yours faithfully,
Sgd: Gurbakhash Singh."

The cheque was cashed and the money was retained by the solicitor.

It was urged by the appellant that on the facts there was no accord and satisfaction and in any event section 64 of the Contracts (Malay States) Ordinance, 1950, has no application where the parties stand in relation to each other as judgment debtor and decree holder. That section reads:—

"64. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit."

It will be noted that this section materially alters the English doctrine of accord and satisfaction, as to the right of a party to take advantage of a release made for his benefit. Further it has been held that this section cannot be enlarged by any implication of the English doctrine and English authorities would therefore be misleading. In India, they have apparently been scrupulously avoided.

It has been urged again basing on Indian authorities that this section does not apply whether the parties stand in the position of judgment creditor and judgment debtor. That

may be true but that argument is sustainable if, on the facts of the present case, Gurbakhash Singh was acting as an agent of the debtor when he wrote to the solicitors tendering the cheque. Mr. Wilson, counsel for the respondent eloquently argued that this was not so and that the letter of Gurbakhash Singh and the conduct of the creditor amounted to an independent contract and therefore clearly falls within illustration (c) to section 64. Illustration (c) reads as follows:—

"(c) *A.* owes *B.* $5,000. *C.* pays to *B.* $1,000 and *B.* accepts them, in satisfaction of his claim on *A.* This payment is a discharge of the whole claim."

As explained in *Firm Basdeo, Ram Sarup* v. *Firm Dilsukh Rai, Sewak Ram* [1] it is a question of fact wheher illustration (c) applies. One paragraph reads:—

"If a person sends a sum of money on the terms that it is to be taken, if at all, in satisfaction of a larger claim and if the money is kept, it is a question of fact as to the terms upon which it is so kept. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If accord is a question of agreement there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim and to cause him to act upon that view. In either case it is a question of fact."

On the facts it is clear that a third party made an offer subject to conditions and under those conditions the creditor could either return the money to the offerer or retain the cheque and discharge the debtor's liabilities. His conduct in cashing the cheque and retaining the money can only be considered as an agreement to discharge the debtor from any further liability.

The appeal will therefore be dismissed with costs.

Barakbah C.J. (Malaya) and **Ismail Khan J.** concurred.

Appeal dismissed.

Solicitors: *Wrigglesworth & Co.; Wilson & Co.*

GOH SIEW WAH v. COLUMBIA FILMS OF MALAYSIA LTD.

[O.C.J, (Winslow J.) September 9, 1965]

[Singapore — Summons in Chambers No. 1173 of 1965 in Suit No. 1251 of 1965]

Companies — Company incorporated outside Singapore — Service of writ on company — Undertaking to accept service given by solicitor for company — Service on solicitor — Conditional appearance entered — Whether service valid — R.S.C. 1934 O. IX rr. 1 and 10 — Companies Ordinance (Cap. 174), ss. 301(1)(c) and 305.

Practice and Procedure — Service on company — Solicitor undertaking to accept service.

The plaintiff issued a writ in respect of his claim for damages for wrongful dismissal against the defendant company, which was incorporated outside Singapore but carried on business in Singapore. Under the provisions of section 301(1)(c) of the Companies Ordinance, the name and address of one Philip Lau was delivered to the Registrar of Companies for registration as a person resident in Singapore authorised to accept service of process on behalf of the company. The writ was taken out in the name of the company. The solicitors for the company undertook to accept service on behalf of the company and service was effected on the company's solicitors. Subsequently the company's solicitors entered conditional appearance and made an application to set aside the writ on the ground that it was addressed to the company and not to Philip Lau and alternatively that the service was irregular because the writ had not been correctly addressed.

Held: (1) section 305 of the Companies Ordinance relates to the question of the sufficiency of service and does not impose any requirement as to the wording of the writ itself and therefore the writ in this case was correctly addressed;

(2) as the solicitors for the company had undertaken to accept service, section 305 of the Companies Ordinance, which provides that process can be served on the person whose name had been registered with the registrar as the person authorized to accept process on behalf of the company, was rendered inoperative and therefore the writ was properly served in this case on the solicitors.

Cases referred to:—

(1) *The "O. Sambaur"* [1958] M.L.J. 85.

(2) *Pelajaran Nasional Indonesia* v. *Joe Seang & Co. Ltd.* [1958] M.L.J. 113.

(3) *Fester Fothergill and Hartung* v. *Russian Transport & Insurance Co.* [1927] W.N. 27.

CIVIL SUIT.

D. G. Ironside for the plaintiff.

D. E. S. Chelliah for the defendants.

Winslow J.: The plaintiff in this suit issued a writ in respect of his claim for damages for wrongful dismissal etc. against the defendant company (hereinafter called "the company"), a limited company incorporated outside the State but carrying on business within the State, at 32A Clemenceau House, Penang Lane, Singapore.

Under the provision of section 301(1)(c) of the Companies Ordinance (Cap. 174), the name and address of one Philip Lau of 32A Clemenceau House, Penang Lane, Singapore, was delivered to the registrar for registration as a person resident in the State authorised to accept service of process on behalf of the company.

Mr. D. E. S. Chelliah of Messrs. Drew & Napier, Chartered Bank Chambers, Singapore, accepted service on behalf of the company but only a conditional appearance was entered for the company on the ground that the writ was defective, in that it was addressed to the company and not to the said Philip Lau, and, in due course, by the present summons-in-chambers (No. 1173 of 1965), an application was made